

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

**Garner Independent LP (Garner
Independent II),**
Appellant,

v.

City of Davenport Board of Review,
Appellee.

ORDER

Docket Nos. 13-103-1066 thru 1122

On June 3, 2014, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Garner Independent LP, (Garner Independent II), was represented by CPA Deborah A. Davis of Strategic Tax Services, Chicago, Illinois, and submitted evidence in support of its appeals. The Board of Review was represented by attorney John E. Lande, Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, Iowa and submitted evidence in support of its decisions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Garner Independent LP (Garner Independent II) is the owner of properties located at 1531 West 53rd Street, Davenport, Iowa, and appeals from the City of Davenport Board of Review decisions reassessing the subject properties. The properties, known collectively as Garner Independent II, are within a three-story frame building with 83,845 square feet of gross area on a 5.573-acre site. Garner Independent II consists of 57 residential, condominium units with an underground parking garage, and common areas built in 2007. Garner Independent II units are used as senior, independent living apartments. The properties are part of a larger senior-housing campus that includes two additional

buildings; a 24-unit independent living building, and a 62-unit assisted living building built in phases between 1999 and 2007, which are all separately assessed and appealed.

The value of the land, common areas, and garages are apportioned to each condominium according to the fractional ownership recorded in the horizontal property regime. The units, ranging in size from 751 square-feet to 1455 square-feet, have common ownership, are managed as a whole, are not offered for sale individually, and the residential units are rented exclusively to seniors. The units are collectively assessed at \$7,897,700, allocated \$702,900 to land value and \$7,194,800 to improvement value. The breakdown of the 2013 assessment information on each parcel is as follows:

Docket Number	Parcel Number	Unit #	TSFLA	Jan 1 Value	BOR Value	Appellant Value
13-103-1066	M1037-105	105	1061	\$144,000.00	\$144,000.00	\$99,079.00
13-103-1067	M1037-106	106	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1068	M1037-107	107	1,061	\$144,000.00	\$144,000.00	\$99,079.00
13-103-1069	M1037-108	108	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1070	M1037-111	111	1,325	\$179,800.00	\$179,800.00	\$123,747.00
13-103-1071	M1037-113	113	1,278	\$173,400.00	\$173,400.00	\$119,325.00
13-103-1072	M1037-114	114	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1073	M1037-121	121	852	\$115,600.00	\$115,600.00	\$79,583.00
13-103-1074	M1037-122	122	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1075	M1037-123	123	1,278	\$173,400.00	\$173,400.00	\$119,325.00
13-103-1076	M1037-124	124	1,325	\$179,800.00	\$179,800.00	\$123,747.00
13-103-1077	M1037-127	127	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1078	M1037-128	128	1,061	\$144,000.00	\$144,000.00	\$99,079.00
13-103-1079	M1037-129	129	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1080	M1037-130	130	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1081	M1037-203	203	835	\$113,300.00	\$113,300.00	\$78,001.00
13-103-1082	M1037-205	205	1,021	\$138,500.00	\$138,500.00	\$95,326.00
13-103-1083	M1037-206	206	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1084	M1037-207	207	1,021	\$138,500.00	\$138,500.00	\$95,326.00
13-103-1085	M1037-208	208	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1086	M1037-211	211	1,455	\$197,400.00	\$197,400.00	\$135,818.00
13-103-1087	M1037-213	213	1,397	\$189,600.00	\$189,600.00	\$130,502.00
13-103-1088	M1037-214	214	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1089	M1037-215	215	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1090	M1037-216	216	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1091	M1037-217	217	751	\$101,900.00	\$101,900.00	\$70,170.00

Docket Number	Parcel Number	Unit #	TSFLA	Jan 1 Value	BOR Value	Appellant Value
13-103-1092	M1037-219	219	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1093	M1037-220	220	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1094	M1037-221	221	1,021	\$138,500.00	\$138,500.00	\$95,326.00
13-103-1095	M1037-222	222	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1096	M1037-223	223	1,278	\$173,400.00	\$173,400.00	\$119,325.00
13-103-1097	M1037-224	224	1,325	\$179,800.00	\$179,800.00	\$123,747.00
13-103-1098	M1037-227	227	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1099	M1037-228	228	1,061	\$144,000.00	\$144,000.00	\$99,079.00
13-103-1100	M1037-229	229	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1101	M1037-230	230	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1102	M1037-303	303	835	\$113,300.00	\$113,300.00	\$78,001.00
13-103-1103	M1037-305	305	1,021	\$138,500.00	\$138,500.00	\$95,326.00
13-103-1104	M1037-306	306	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1105	M1037-307	307	1,061	\$144,000.00	\$144,000.00	\$99,079.00
13-103-1106	M1037-308	308	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1107	M1037-311	311	1,455	\$197,400.00	\$197,400.00	\$135,818.00
13-103-1108	M1037-313	313	1,397	\$189,600.00	\$189,600.00	\$130,502.00
13-103-1109	M1037-314	314	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1110	M1037-315	315	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1111	M1037-316	316	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1112	M1037-317	317	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1113	M1037-319	319	1,015	\$137,700.00	\$137,700.00	\$94,738.00
13-103-1114	M1037-320	320	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1115	M1037-321	321	1,061	\$144,000.00	\$144,000.00	\$99,079.00
13-103-1116	M1037-322	322	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1117	M1037-323	323	1,278	\$173,400.00	\$173,400.00	\$119,325.00
13-103-1118	M1037-324	324	1,325	\$179,800.00	\$179,800.00	\$123,747.00
13-103-1119	M1037-327	327	1,202	\$163,100.00	\$163,100.00	\$112,245.00
13-103-1120	M1037-328	328	1,061	\$144,000.00	\$144,000.00	\$99,079.00
13-103-1121	M1037-329	329	751	\$101,900.00	\$101,900.00	\$70,170.00
13-103-1122	M1037-330	330	751	\$101,900.00	\$101,900.00	\$70,170.00

Garner Independent II protested to the Board of Review that the assessments were not equitable as compared to like properties in Davenport and that the properties were assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1) and (2). It claimed the actual combined parcels' value was \$5,435,950. The Board of Review denied the petitions.

Garner Independent II then appealed to this Board re-asserting its claims.

Deborah Davis, on behalf of Garner Independent II, testified the parent company of the properties owns three buildings at this location, which operate as a senior living campus. She stressed Garner Independent II did not have a nursing component and therefore was not a Continuing Care Retirement Community. Davis reported the subject properties were classified commercial by the Assessor through the 2011 assessment when they were converted to condominiums. The classification was changed to residential for the 2012 assessment year. According to Davis, she anticipated the properties' assessments to increase by 15% to 16% from 2011 to 2012 with the classification change based on industry findings. (Exhibit 6). The assessments collectively increased by 27%. (Exhibit 12-revised). Davis voiced concern that an income approach would inflate the market value of the properties by including revenue for services as opposed to revenue from the real estate alone. She estimated the real estate revenue was less than 25% of the total revenue based on her knowledge.

Davis provided a list of 2010 through 2012 apartment sales of both commercial and residential properties and the sale price per unit. (Exhibit 4). She adjusted the sale prices for age and made a 16% upward adjustment for commercially classified properties. Detailed information about these properties and sale conditions was not provided. It does not appear these properties are comparable to the subject properties, the adjustments were minimal, and most importantly, none of the units were individually sold. For these reasons, we give this data no consideration.

Garner Independent II asked this Board to rely on its decision in *Independence Creek, LP v. Polk County Board of Review*, Docket No. 07-77-0309. (Exhibit 3). This decision related to the assessed value of a commercially classified property that included senior independent living apartments. The property was one commercial parcel, not 57 residential condominium parcels. Because of the significant differences between the Garner Independent II properties and the *Independence Creek* property, we see no relevance of that decision to the subject properties' appeals.

Garner Independent II also asserts Iowa Code 441.21(1)(d) requires equalization because there is a variance of more than 5% in value when compared to the assessment of another independent living property in Scott County. Bettendorf Fountains Independent 2 is located at 3728 Thunder Ridge Road in Bettendorf. (Exhibits 4 & 12-revised). Collectively, it consists of 53 senior independent living units in a building with nearly identical floor plans to Garner Independent II and was built in 2007. Based on photographs Davis provided, the Fountains property appears very similar in design and construction to Garner Independent II. Like the subject property, the Fountain units are residential condominiums. Garner Independent II apparently totaled the assessment of all 53 separately assessed parcels in the Fountains to arrive at the assessment it compares for its section 441.21(1)(d) analysis. Similarly, it uses the total of all 57 parcels assessments in Garner Independent II. Because Iowa statutes require each condominium to be separately assessed, the comparison made by Garner Independent II cannot be used to support its equity/equalization claim under section 441.21(1)(d).

Garner Independent II also provided two articles on topics of senior housing, long-term care, and congregate care facilities valuation. (Exhibits 7 & 8). An article by the National Investment Center entitled “The Case for Investing in Seniors Housing and Long Term Care Properties with Updated Properties” states, “In reality, seniors housing and care investments are both business and real estate, as are retail and hotel property investments.” (Exhibit 7, p. 11). Valuation of this type of real estate is difficult because income from housing is not typically broken down into a real estate component and a services and/or care-giving component. (Exhibit 7, p. 29). According to the article, the real estate value of seniors housing cannot be easily separated from the operating business of providing services and care. (Exhibit 7, p. 29). Additionally, the percentage of costs paid by residents for housing and services changes dramatically for each senior housing type – from mainly housing in independent living units to mainly services and care in skilled nursing facilities. (Exhibit 7, p. 29). It is estimated that in independent living units approximately 45% of revenue is for services and 55% for

housing. We note this is significantly higher than the amount of income derived from the real estate suggested by Davis (25%) but is line with the income derived from real estate estimation made by Garner Independent II's appraiser (53.21%).

In "Assessing Congregate Care Facilities: A Unique Problem in Valuation," David Wallery states that determining how much of a business entity's value is tangible real estate value and how much is business value is an important issue. (Exhibit 8, p. 270). Wallery comments the housekeeping and food services, and activity planning provided are labor intensive and the profit earned is attributable to the business, not to the tangible real property. (Exhibit 8, p. 270). He cautions that failure to distinguish between business income and the tangible property's income may result in overassessment of the real property value. (Exhibit 8, p. 270). He also reports there are unique super-adequate features that add to construction costs, and the risk and uncertainty of the extended period for lease-up or sellout reduces the income of these properties. (Exhibit 8, p. 271). Wallery comments on the difficulties presented by each of the three approaches to value. Of particular note, Wallery identifies many of the difficulties inherent in using the sales approach to value these properties and concludes that similarly configured apartment building sales may be used as a proxy for the sale of a congregate care facility. (Exhibit 8, p. 272). While these articles are informative and interesting, they do not provide specific information related to the valuation of the Garner Independent II properties.

Davis also explained facilities revenue reported in real estate investment trusts (REITs) typically includes combined revenue from the real estate and all services. REITs are companies that own, and in most cases, operate income-producing real estate. (Exhibit 9). This leads to a recognition that the income and sales comparison approaches cover the value of both tangible and intangible assets and consider the operating characteristics and current use of the business. According to Davis' testimony and her reference to portions of a sample Health Care REIT master lease similar to Garner

Independent II's, 90% of the revenue reported by a REIT must be attributable to the real estate under Internal Revenue Code requirements.

An appraisal by David Mark Nelson of Roy R. Fisher, Davenport, Iowa completed for Garner Independent II collectively valued the properties at \$6,800,000, allocated \$400,000 to land value, \$100,000 to excess land value and \$6,300,000 to improvement value as of January 1, 2013. He did not determine a value for each condominium unit or otherwise allocate value to the individual units. (Exhibit 1). Nelson testified that he is experienced in multi-residential senior housing.

The appraisal developed all three approaches to value and excluded personal property and business value. Nelson notes the sales approach, in his opinion, is the least reliable due to limited comparable sales. He reported the income approach to value is normally given the most weight when valuing income-producing property. The following summarizes his results.

Approach	Nelson Appraisal
Sales	\$6,550,000
Income	\$6,800,000
Cost	\$7,020,000
Final	\$6,800,000

In his sales approach, Nelson basically determined the value of Garner Independent II by taking the indicated unit value from apartment sales (\$115,000) and multiplying it times the 57 units in Garner Independent II. Nelson testified he used apartment sales to eliminate the contributory value of many services such as on-site meals, housekeeping, transportation, recreation, and the availability of emergency medical support, which were included in the tenant fees paid at Garner Independent II. He did not consider any independent living sales or individual condominium sales. Nelson's comparables sales were classified residential, like the subjects, and he gave the most weight to the more similarly designed sale properties. He based his calculations on the subjects' average unit size of 1023 square

feet of living area. We note the subject properties are not uniformly sized; instead they range from 751 square feet of living area to 1455 square feet of living area.

Nelson's income approach was developed with apartment data, rent and expenses, and a capitalization rate based on apartment sales. He estimated a loss rent to account for the non-income generating common areas. He indicated the common areas in this building are sufficient to serve an additional building, which was initially planned for the complex. Accordingly, in his cost approach, Nelson applied an obsolescence adjustment to account for the substantial common areas that do not generate income, but are required for the business' operation. The Board of Review was critical of Nelson's use of apartment sales and income/expense data and failure to consider condominium sales to value the property. It believes Nelson's use of apartment related data is inconsistent with his highest and best use analysis and, we find it doesn't properly value the current use of the property. It also negatively viewed his use of apartment unit values without also considering value per-square-foot. The Board of Review also identified several sales of dissimilar properties and distress sales used by Nelson.

Appraiser Ranney Ramsey, Nelsen Appraisal Associates, Inc., Urbandale, Iowa completed an appraisal for the Board of Review valuing the subject as of January 1, 2013. (Exhibit D). Ramsey's report included three appraisals of buildings on the same senior living campus: Silvercrest Garner Farms, a 62-unit assisted living and memory care building; Garner Independent One, a 24-unit independent living building; and the subject property, Garner Independent II. He collectively valued the Garner Independent II properties at the "going concern" value of \$10,100,000, excluding personal property. Like Nelson, Ramsey did not value the units individually or otherwise allocate value to the units. Ramsey's developed all three approaches to value and his value conclusions are summarized below.

Approach	Ramsey Appraisal
Sales	\$10,500,000
Income	\$10,500,000
Cost	\$10,500,000
Final	\$10,500,000
Less Personal Property	(\$400,000)
Final	\$10,100,000

Ramsey stated he did not consider it appropriate to value the individual condominium units. In his opinion, the condominium form of ownership was probably motivated by favorable tax treatment rather than as a means of selling individual units. He reports the individual units are not offered for sale and none of the units have ever been sold in the history of the property.

In his sales approach, Ramsey used seven sales of senior housing properties, independent living and assisted living. He testified REITs own the majority of institutional investment property and they want newer, bigger, well-performing properties. He did not use apartment sales because they do not provide services and are not similarly designed. He used values per-square-foot of rentable space, not gross area for analysis of all his sales, although the facilities include substantial non-rentable common areas. Ramsey testified he valued the building as a going concern, but not allocate value to each condominium parcel. Based on 58,201 square feet of rentable space at an adjusted sales price per-square-foot of \$180, Ramsey estimated a going concern value for the subject by the sales comparison approach of \$10,500,000 (rounded).

Ramsey considered 100% of the revenue, including services revenue, as rent. He allotted \$7000 per unit for personal property and did not exclude any intangible property or business value. Ramsey calculated the net operating income of \$1,069,830 for Garner Independent II and used a capitalization rate of 10.17% to arrive at his income value of \$10,500,000 (rounded).

Ramsey developed the cost approach using the Marshall Valuation Service category for independent living using the gross building area. He valued the land by reviewing seven vacant land sales purchased for senior housing properties in Iowa between 2006 and 2013. He determined a value for the site of \$850,000 and for the improvements of \$9,669,469, and concluded a value by the cost approach of \$10,500,000 (rounded).

Davis was critical of Ramsey's appraisal because two of the sale properties were sale-leasebacks, a multiple parcel sale with REIT value allocations, included assisted living, memory care and skilled nursing facility sales, four of the seven properties were classified commercial, and it contains an acreage error. His cost approach used 20-foot ceiling height construction when the property has 9-foot ceiling height which incorrectly inflated the improvement value. Davis disagreed with his use of an effective age less than half of the actual age, and the use of the Des Moines cost multiplier, rather than the Davenport multiplier.

Tom McManus, Deputy Assessor for the City of Davenport, testified on behalf of the Board of Review. He testified the assessment was developed using the Iowa Real Property Appraisal Manual for the improvements and the land values were set using a unit rate derived from the Assessor's annual land sales review. The value of excess land was adjusted as wasteland. (Exhibit C). McManus allocated the land values and common area improvements by the percentage of each condominium unit's interest in the common areas in the horizontal regime.

According to McManus, the 27% increase in the Garner Independent II assessment was the result of a combination of a market adjustment factor and because of the classification change. In his experience, the standard increase attributed to the application of the residential rollback in conversion property is 17% to 22%. He testified the Bettendorf Fountains' property assessment increased roughly 3% after conversion, while an increase of roughly 16% would be in line with Davenport increases. The property assessment developed by the Assessor's office complies with the statutory requirements

of Iowa Code sections 499B.10 & 11(1) by individually valuing each condominium parcel, considering the improvement and its fractional share of land and common area. For this reason, the assessment is the only useful evidence in the record of the subject properties' market value as of January 1, 2013.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

Iowa Code sections 499B.10 & 11(1) provide that each individual apartment located in a building committed to a horizontal property regime shall constitute for all purposes a separate parcel of real property. The statute requires that each apartment and its respective fractional share of the land and general common elements be separately valued and assessed. Under this provision, the property assessments cannot be on the entire horizontal property regime combined but must be specific to the individual units. *See Dinkla v. Guthrie Cnty. Bd. Of Review*, No. 05-1662, 2006 WL 2422170, at *453 (Iowa App. Aug. 23, 2006). The subject property is committed to a horizontal property regime and must be valued according to sections 499B.10 & 11. Consistent with *Dinkla* and the valuation method prescribed by Iowa law, Garner Independent II bears the burden of showing the individual condominium units are either inequitably assessed or over-assessed. Garner Independent II cannot meet its burden by simply showing the market value of the entire Garner Independent II complex.

Garner Independent II argued the subject property must be equalized under Iowa Code section 441.21(1)(d). This section provides for equalization of closely adjacent property in adjoining assessing jurisdictions where there is a variation of five percent or more and no adequate reason exists for the variation. Garner Independent II alleged this section requires its assessments be reduced to equalize them with the Fountains Independent 2 facility located in Bettendorf because the total of the Fountains' assessment is more than five percent lower than the subject. Garner Independent II used an inappropriate method of adding together all the individual condominium unit values in each property location for comparison. It has not shown that the individual condominium units require equalization. For this reason, we need not decide whether the two locations satisfy the definition of "closely adjacent" nor reach the merits of their equalization argument.

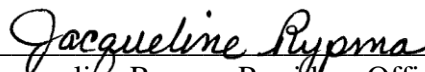
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the

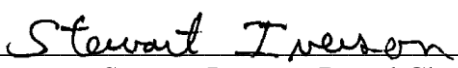
subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

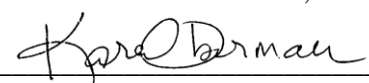
Garner Independent II failed to provide comparable sales evidence or other evidence to show the fair market value of the individual parcels in this consolidated appeal to support its over-assessment claims. All three of Nelson's valuation approaches was based on a total value for the Garner Independent II property collectively and failed to reflect the value of the individual units as required by Iowa statute and *Dinkla*. The only evidence in the record that provides an individual value for each condominium, including its fractional share of land and common areas, are the parcel assessments developed by the Davenport City Assessor. Therefore, we find a preponderance of the evidence does not prove the Garner Independent II properties are over-assessed.

THE APPEAL BOARD ORDERS that the January 1, 2013, assessments as determined by the City of Davenport Board of Review are affirmed.

Dated this 4th day of August, 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

Copies to:

Deborah A. Davis
Strategic Tax Services, Inc,
1440 North Lake Shore, Suite 11E
Chicago, IL 60610
REPRESENTATIVE FOR APPELLANT

John E. Lande
Dickinson, Mackaman, Tyler & Hagen, PC
699 Walnut Street, Suite 1600
Des Moines, IA 50309
ATTORNEY FOR APPELLEE